

## **FOREST TAX LAWS**

The following discussion is a general description of the special forest tax law programs – the Forest Crop Law (FCL), the Woodland Tax Law (WTL), and the Managed Forest Law (MFL) – with a focus on how they affect taxes paid by participants in the programs. The Department of Revenue's (DOR) role in administering the forest tax laws is limited. Primary responsibility for administering these programs lies with the Department of Natural Resources (DNR).

### **Background**

In the early 1900s, Wisconsin was a major timber producer. However, by the early 1920s, the timber industry was in financial ruin because the best timber had been harvested, little replanting had been done, and large areas had suffered from fire damage. As a result, large amounts of timber land generated little or no income, resulting in landowners being unable to pay their property taxes. Since these lands were often unsuitable for other uses, nobody bid on the land at tax sales, and counties ended up owning the land. Because county-owned land is exempt from taxes, as the amount of land owned by counties increased, property taxes were increasingly shifted onto owners of non-exempt land. This caused more owners to become unable to pay their taxes, and led to a fiscal crisis for local governments. An idea arose that reducing the annual tax burden on forest landowners might reduce land abandonment and encourage reforestation. However, local governments were unwilling to forgo the taxes they collected on forest land. The solution was to amend to the uniformity in taxation clause of the state constitution (Article VIII, Section 1) to create an exception for forest land. The amendment was enacted in 1927, and the FCL was enacted later that year. The WTL and MFL programs are also permitted as a result of the 1927 amendment to the uniformity clause.

### **Forest Crop Law (FCL)**

The FCL was enacted in 1927. Under the FCL, an owner of a complete quarter-quarter section (typically 40 acres) in a town (or, beginning in 1981, a village) could petition the Department of Natural Resources (DNR) to enroll that land in the program. If the DNR determined that forestry was the best use for the land and that a stand of merchantable timber could be produced within a reasonable period of time, the land was enrolled under the program. Enrollment contracts were 25 or 50 years, at the landowner's option. The contract required the owner to practice forestry, to notify the DNR of timber harvests, and to permit public access to the land for hunting and recreation.

Although FCL land is exempt from property taxes, FCL contracts require landowners to make certain payments related to their land, as described below. In addition, the DNR also makes certain payments on this land.

(1) State payment: Every year, the DNR pays \$0.20 per acre to the municipality where FCL land is located. The municipality keeps 80% and remits 20% to the county.

(2) Acreage share: This is an annual per acre payment by the landowner to the municipality

where the land is located. The municipality keeps 80% and remits 20% to the county. The payments are shown below:

Date of entry or type of land	Applicable dates	Acreage Share
Prior to 1972	Permanent	\$ 0.10
Special provision land (entered from 1949 o 1963 and located outside DNR fire control areas)	Permanent	\$ 0.20
After 1972	2004 to 2013	\$ 1.66
After 1972	2014 to 2023	\$ 2.52

The payment is recalculated every 10 years. The payment for land entered after 1972 for the period 2014 to 2023 is based on a formula and equals \$0.20 (the amount charged in 1972) multiplied by the following ratio:

$$\frac{\text{Aggregate Land Value in the State in 2012} = \$132,650,021,400}{\text{Aggregate Land Value in the State in 1972} = \$10,544,826,600} = 12.5796$$

(3) Severance tax: The severance tax, paid by the landowner, is 10% of the value of timber harvested, except that no tax is due from "special provision" lands. Every year, the DNR establishes values for the various types of timber harvested across the state. These values are used to calculate the value of timber harvested from FCL land. The DNR keeps an amount equal to the payments it has made to the municipality related to that FCL parcel. The remainder is paid to the municipality, which keeps 80% and remits 20% to the county.

(4) Withdrawal tax: Land may be withdrawn from the FCL at the owner's option or by order of the DNR if the landowner has violated the FCL contract. In either case, the landowner must pay a withdrawal tax equal to the sum, for all the years the land was under the FCL program (renewed contracts from the year of renewal), of the difference between the real estate taxes that would have been levied on the land and the acreage shares plus severance taxes actually paid on the land. Each year's difference is also subject to simple interest of 12% per year (for pre-1977 contracts, 5% per year). The DNR retains an amount equal to the total payments it made to the municipality related to that FCL parcel. The remainder is paid to the municipality, which keeps 80% and remits 20% to the county.

(5) Termination tax: At the expiration of a contract, if the land is not enrolled under the MFL program, the landowner is assessed a termination tax of 10% of the value of the standing timber. From the proceeds, the DNR retains an amount equal to the total payments it has made to the municipality on that parcel, and remits any remainder to the municipality, which keeps 80% and remits 20% to the county.

The FCL was generally closed to new entries in 1985. A provision of the 2009/11 biennial budget permits a non-profit archery club that purchased land already enrolled under the FCL program before January 1, 2009, to request DNR to, in effect, keep the land in the program. Because some FCL contracts are for 50 years, the last FCL contracts will expire in 2035.

## **Woodland Tax Law (WTL)**

The WTL was enacted in 1954 and applied to land in towns. Under the law, the owner of a forest land parcel of at least 10 acres that was too small to be enrolled under the FCL could petition the DNR to enroll the land under the WTL. DNR enrolled the land if it determined that the land was suitable for growing timber and that forestry was the best use for the land. Enrollment contracts were for 15 years. The contracts generally required the landowner to follow a forest management plan, but did not require the land to be open for public access. The last contracts for WTL land expired in 1999.

Although land enrolled under the WTL was exempt from property taxes, WTL contracts required owners to make certain payments related to the land, as described below.

- (1) State payment: The DNR made no payments to municipalities for land enrolled under the WTL.
- (2) Acreage share: This was an annual per acre payment by the landowner to the municipality where the land was located. On land enrolled prior to 1977, the payment was \$0.20 per acre. On land entered after 1977, the payment was \$0.40 per acre through 1983, \$1.49 per acre from 1984 to 1993, and \$1.67 per acre from 1994 to 1999. The municipality retained the entire payment.
- (3) Withdrawal payment: Land could be withdrawn from the WTL at the owner's option or by order of the DNR if the owner did not comply with the contract. A withdrawal penalty, paid by the landowner, was 1% of the average value per acre of forest land in the county where the land was located in the year before withdrawal multiplied by the number of years the land was enrolled. The municipality retained the entire payment.

## **Managed Forest Law (MFL)**

The MFL was enacted in 1985 to replace the FCL and the WTL. Under the MFL, an owner of ten or more contiguous acres of forest land can petition the DNR to enter the land under the program. (Land in a city did not qualify until April 28, 2004.) If the DNR determines (a) that at least 80% of the parcel is capable of producing at least 20 cubic feet of sellable timber per acre per year, and (b) that the land is not developed in a manner incompatible with the practice of forestry, the DNR issues an order enrolling the land. The owner can choose to enroll the land for a 25 or 50 year period. Unlike the FCL and WTL, the order to enter the land under the MFL is not deemed a contract between the DNR and the landowner. On enrollment, the owner agrees to follow a forest management plan and, generally, to open the land to public access. Landowners may, however, close up to 160 acres (80 acres on land whose MFL orders that took effect before April 28, 2004) per municipality from public access.

Although MFL land is exempt from property taxes, both the state and MFL landowners are required to make certain payments on land enrolled under the program, as described below.

- (1) State payment: Every year, the DNR pays \$0.20 per acre to the municipality where MFL land is located. The municipality keeps 80% and remits 20% to the county.
- (2) Acreage share: This is an annual per acre payment by the landowner to the municipality where the land is located. The municipality keeps 80% and remits 20% to the county. The payments are

as follows:

	Acreage Share by Year Paid		
	2004 to 2008	2009 to 2013	2014 to 2018
Entered before April 28, 2004	\$ 0.83	\$ 0.67	\$ 0.79
Entered on or after April 28, 2004	\$ 1.46	\$ 1.67	\$ 2.14

The payment for 2014 to 2018 for land entered before April 28, 2004 is based on the original payment (\$0.74 per acre) multiplied by the ratio of the average statewide tax per acre on land classified as agricultural, agricultural forest, undeveloped, taxable forest, and other land paid in 2012 (the 2011/12 property tax year) divided by the corresponding average for taxes paid in 1986. The payment for 2014 to 2018 for land entered on or after April 28, 2004, is 5% of the state average net property tax per acre on taxable forest land paid in 2012 (the 2011/12 property tax year). Both payments are recalculated every five years.

(3) Closure fee: This is an additional annual per acre payment by the landowner to the municipality where the land is located to close the land from public access. The municipality remits the entire payment to the DNR for deposit in the state Conservation Fund. The payments are as follows:

	Closure Fee by Year Paid		
	2004 to 2008	2009 to 2013	2014 to 2018
Entered before April 28, 2004	\$ 1.12	\$ 0.90	\$ 1.08
Entered on or after April 28, 2004	\$ 5.82	\$ 6.67	\$ 8.54

The payment for 2014 to 2018 for land entered before April 28, 2004 is based on the original payment (\$1.00 per acre) multiplied by the same ratio used to calculate the acreage share. The payment for 2014 to 2018 on land entered on or after April 28, 2004 is 20% of the state average net property tax per acre on taxable forest land paid in 2012 (the 2011/12 property tax year). Both payments are recalculated every five years.

(4) Yield tax: This tax, paid by the landowner, equals 5% of the value of timber harvested. As with the MFL, the DNR establishes values for the various types of timber harvested across the state, and uses these values to calculate the value of timber harvested from MFL land. Except for land converted from the FCL to the MFL, the yield tax is waived on harvests during the first five years of enrollment on lands entered on or after April 28, 2004. The DNR remits 100% of collections to the municipality where the timber was harvested. (Before July 1, 2004, DNR retained 50% of this tax.) The municipality retains 80% of the payment and remits 20% to the county.

(5) Non-compliance fee: Beginning on April 28, 2004, if the DNR determines that a MFL landowner has not complied with the terms of the land management agreement, a non-compliance fee of \$250 is imposed on the landowner. The DNR notifies the municipality where the land is located, and the municipality collects the fee. The municipality keeps 80% of the fee and remits 20% to the county.

(6) Withdrawal fee: Beginning on April 28, 2004, the DNR assesses a fee of \$300 on the landowner for all withdrawals from the MFL program that occur before the expiration of the MFL order. The DNR retains the entire fee.

(7) Withdrawal tax: On an initial order, on withdrawal from the program the landowner must pay the greater of (a) the product of the net assessed value tax rate in the year prior to withdrawal times the assessed value of the land in the year prior to withdrawal times the number of years the land was under an MFL, minus any acreage share and yield taxes paid; or (b) 5% of the stumpage value of the merchantable timber on the land. On a renewed order, on withdrawal from the program, a similar calculation is made, except that the calculation under (a) is only made for the period covered by the renewed order. The DNR remits 100% of any withdrawal taxes to the municipality where the land is located. (Before July 1, 2004, the DNR retained 50% of the tax). The municipality keeps 80% of the payment and remits 20% to the county.

(8) Enrollment expiration: When an enrollment expires and is not renewed, the land is withdrawn from the program and becomes subject to the property tax. There is no withdrawal fee or withdrawal tax in this situation.

### Enrollment levels

Property taxes are a major concern for forest landowners. Increasing demand for forest land for recreational and residential uses has led to significant increase in the market value, and hence the property taxes paid, for such land. For a forest landowner interested in pursuing forestry, enrolling the land under the MFL is an increasingly attractive way to ease the property tax burden. The number of privately owned acres enrolled under the various forest tax law programs and the average per acre property tax on taxable forest land for selected years are shown in the table below.

**ACRES ENROLLED AND AVERAGE PROPERTY TAX ON FOREST LAND, 1960 – 2011**

Year	Acres Enrolled				Average Property Tax per Acre of Taxable Forest Land
	Woodland Tax Law	Forest Crop Law	Managed Forest Law	Total Acres Enrolled	
1960	60,431	361,211	0	421,642	\$0.52
1965	107,431	490,154	0	597,585	0.56
1970	154,185	643,514	0	797,699	0.87
1975	158,302	951,808	0	1,110,110	1.42
1980	256,349	1,287,833	0	1,544,182	3.31
1985	447,851	1,468,912	0	1,916,763	5.90
1990	472,236	1,452,194	372,102	2,296,532	6.87
1995	302,338	1,406,718	804,269	2,513,325	7.76
2000	55,507	471,727	1,971,474	2,498,708	12.90
2001	0	447,673	2,079,062	2,526,735	15.73
2002	0	428,790	2,231,154	2,659,944	17.96
2003	0	400,716	2,417,023	2,817,739	20.65
2004	0	356,226	2,629,513	2,985,739	23.26
2005	0	334,362	2,784,889	3,119,251	23.53
2006	0	295,417	2,843,447	3,138,864	24.82
2007	0	271,093	2,930,647	3,201,740	27.33
2008	0	243,276	2,983,305	3,226,583	29.04
2009	0	224,956	3,031,870	3,256,826	31.19
2010	0	208,167	3,079,985	3,288,152	32.61
2011	0	190,926	3,133,534	3,324,460	32.55